



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2003

Mr. T. Scott Petty
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2003-9269

Dear Mr. Petty:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193582.

The Harris County Human Resources and Risk Management Office (the "county") received a request for a copy of the original paperwork concerning employment benefits of the requestor's son, a former county employee now deceased. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found.*, 540 S.W.2d at 685. This office has determined that information revealing certain types of personal financial choices relating to a transaction between an individual and a governmental body are protected under common-law privacy. See Open Records Decision No. 600 (1992) (designation of beneficiary of employee's retirement benefits and optional insurance coverage protected by privacy). You indicate that the submitted documents include information regarding the beneficiaries of the decedent's employee benefits.

As you acknowledge, because the employee at issue is deceased, the submitted information is not excepted from disclosure on the basis of the decedent's common-law right of privacy. See *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.) (a person's common-law right of privacy terminates

upon death); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979) ("action for invasion of privacy can be maintained only by a living individual whose privacy is invaded") (quoting Restatement of Torts 2d); *See Attorney General Opinion JM-229 (1984)* ("the right of privacy lapses upon death"), *Open Records Decision No. 272 (1981)*.

If, however, release of information about a deceased person reveals highly intimate or embarrassing information about a living person, the information is protected by common-law privacy on the basis of the living person's privacy interest. *See Attorney General Opinion JM-299 (1984)*. In this regard, we address the beneficiary information in the submitted documents. The beneficiaries identified in the submitted documents have a common-law privacy interest in the financial information at issue. *See Open Records Decision No. 373 at 3 (1983)*. The requestor, as one of the beneficiaries, has a special right of access to information in the submitted documents to the extent it pertains to her. *See Gov't Code § 552.023* (a person has a special right of access to information that is excepted from public disclosure under laws intended to protect the person's privacy interest as subject of the information). However, to the extent the submitted information reveals the identity of another currently designated, living beneficiary, such information must be withheld pursuant to section 552.101 in conjunction with common-law privacy on the basis of the beneficiary's privacy interest. We have marked the submitted documents accordingly. The remainder of the submitted documents relate solely to the requestor and the decedent and, consequently, may not be withheld under section 552.101. We therefore conclude that the remaining submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. *Gov't Code § 552.301(f)*. If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id. § 552.324(b)*. In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id. § 552.353(b)(3), (c)*. If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id. § 552.321(a)*.

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 193582

Enc: Submitted documents

c: Ms. Geraldlynn Bertrand
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(w/o enclosures)